

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

All actions

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

MOTION BY THE PEC AND TLC TO CONFIRM FEE PANEL DETERMINATION
OF COMMON BENEFIT AWARDS FOR TRIBAL WORK CONCURRENTLY AND IN
CONJUNCTION WITH OTHER COMMON BENEFIT WORK

The Tribal Leadership Committee (“TLC”) and Participating Tribes have entered into global Tribal opioid settlement agreements with the following nine Defendants: (1) Certain Distributors (McKesson Corporation, AmerisourceBergen Corporation (n/k/a Cencora, Inc.), and Cardinal Health, Inc.), dated October 6, 2022; (2) Janssen Pharmaceuticals, Inc., dated July 11, 2022; (3) Teva Pharmaceuticals, Inc., dated December 19, 2022; (4) Allergan Finance LLC, dated December 16, 2022; (5) Walmart Inc., dated November 14, 2022; (6) CVS Health Corporation and CVS Pharmacy, Inc., dated December 22, 2022; and (7) Walgreens Co., dated December 2022 (collectively “Global Tribal Agreements”). All conditions precedent for these settlements have been met and they are each effective under their terms. The nine Defendants have fully funded the settlements under their obligations through 2023.¹

¹ The Tribes also resolved their Opioid litigation with Defendant Mallinckrodt as part of its bankruptcy proceedings, as well as defendant Purdue as part of its bankruptcy proceedings.

These same nine Defendants have entered into global Settlement Agreements with governmental Subdivisions. Exhibit R to each of the Subdivision global Settlement Agreements, entitled “Agreement on Attorneys’ Fees, Expenses and Costs,” includes provisions agreeing and directing that common benefit work for Tribes is eligible for common benefit consideration and awards by the Fee Panel. For example, Exhibit R to the Teva global Subdivision Settlement Agreement provides that counsel engaging in “Qualified Tribal Representations” are eligible for common benefit awards (Para. I.V, p. R-3) for the “Common Benefit of all ... Tribal Nations.” (Para. III.E.2, p. R-7.) Exhibit R further provides that the “Common Benefit Fund shall be overseen by the Fee Panel,” and the Fee Panel “shall determine the allocation of funds to eligible Attorneys consistent with this Fee Agreement.” (Para. III. E.5, p. R-8)² The Fee Panel has set forth procedures and deadlines for all counsel to apply for Common Benefit Fee Awards, including Tribal counsel.

On October 2, 2023, this Court entered Docket No. 5212, “**Order Designating Special Master Pursuant to Global Tribal Opioid Settlement Agreements.**” That Order appointed Special Master Cohen to oversee and administer the global Tribal settlements pursuant to the terms of the various settlement agreements. Since October 2, 2023, Special Master Cohen has successfully worked with Tribal Trusts, the TLC, and counsel for the Tribes to allocate and distribute various funds, including:

Abatement Funds. The distribution of Tribal Abatement Funds is governed by various Tribal Abatement Fund Trusts (“TAFTs”). For 2023, the approved Abatement Funds have been

² See also Exhibit R agreements for Distributors (Para. II.C.2.B, p. R-5); Johnson & Johnson (Para. II.C.2.B, p. R-5); Walmart (Para. II.C.2, p. R-6); CVS (Para. II.C.2, p. R-7); and Walgreens (Para. II.C.2, p. R-7), which similarly provide common benefit work for Tribes is eligible for common benefit fee awards by the Fee Panel.

distributed to the Tribes under the terms of each applicable TAFT. Payment of Abatement Funds to the Tribes is a precondition to payment of fees.

Contingency Fee Funds. On November 29, 2023, Special Master Cohen issued **Tribal Contingency Fee Payment Order No. 1 (docket no. 5258)**. Paragraph 2 of that Order provides that “the 2023 contingency fee payment shall be paid to each counsel for any Participating Tribes as soon as practical after (i) the Participating Tribes has received its 2023 Abatement Payment, and (ii) each Counsel for the Participating Tribe has signed the required Attorney Certification Form.” This process is complete and contingency fees have been paid to all counsel.

Common Benefit Funds. The Tribal Attorney Certifications acknowledge the application of the Court’s Ongoing Common Benefit Order (docket 4428) and the 7.5% common benefit assessment it provides. Accordingly, as set forth in Paragraph 8 of the **Tribal Contingency Fee Payment Order No. 1**, the Special Master has held back funds from the global Tribal settlements in order to fulfill the Court’s Ongoing Common Benefit Order. The Special Master also reaffirmed Tribal counsel’s eligibility under Exhibit R for an award from the Common Benefit Fund for common benefit work for the Tribes. *Id.* Accordingly, it is necessary and appropriate for the Fee Panel to allocate the 7.5% Tribal Common Benefit assessment from the global Tribal Settlement Agreements in conjunction with the Panel’s allocation of the Common Benefit Funds created pursuant to the global Subdivision Settlement Agreements.

The PEC and TLC agree that the Tribes have met the conditions necessary to participate in the Common Benefit Fund allocation now being conducted by the Fee Panel. Accordingly, the PEC and TLC hereby move for an Order confirming that the Fee Panel, concurrently and in conjunction with all other common benefit work, should include in its common benefit evaluations,

assessments, and awards any and all common benefit work for the Tribes, and should include the Tribal 7.5% Common Benefit Assessments in its allocations.

Dated: January 2, 2024

Respectfully submitted,

s/ Joseph F. Rice

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